IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 4120 of 2004

AMAR SINGH & ANR.
V/S
STATE & ORS.

Mr. HS SANDHU, for the appellant / petitioner

Date of Order : 24.9.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

By the impugned order, the Executive Engineer has directed to levy 20 times penalty under Rule 31(2) of the Rajasthan Irrigation and Drainage Rules, 1955 (hereinafter referred to as “Rules”, and to stop water supply for a period of one year. Against this order, an appeal has been filed by the petitioner, which too has been dismissed vide order Annex.4.

As appears from Annex.1, that in the intervening night of 17/18.8.04, during the course of petrolling, it was noticed that at about 3.00 AM, water was illegally extracted from place between Burji No.41 and 42 with the help of rubber pipe of 5 inch diameter, and was being used for irrigation. The pipe was seized by the Junior Engineer and tail cultivators. Thereafter the matter was looked into, and it was found that water was being illegally carried for irrigation to Khasra No.12 SDS-A on the land of Amar Singh, Kalasingh, Chanan singh and Ajayab singh; all sons of Kikar Singh, which was in possession of Jaswant singh.

It is contended by learned counsel for the petitioner

firstly that, no notice was given to the petitioner as required under Rule 31(3) of the Rules, and order has been passed without giving opportunity of hearing. Next submission made is that, since the land was joint Khata of four persons i.e. Amar Singh, Kala Singh, Chanan Singh and Ajayab Singh, and water is said to be illegally taken by Jaswant singh only, the order for stoppage of water could be made only qua the land, falling to share of Amar Singh, whose son Jaswant singh was cultivating the land. The third submission is that, in view of Rule 31 (2), the stoppage of supply of water can be ordered only with respect to area of land, which was illegally irrigated or on which the alleged illegally extracted water is found to be spread, and not more. For that purpose, learned counsel for the petitioner wants to submit, that from the report of Patwari, it is clear that water was spread only in the area of 5x10 ft, and another area of 2 bighas 11 biswas, and irrigation could be stopped only to that extent.

I have considered the submissions.

Taking up the first contention, Rule 31(3) of the Rules is reproduced as under:

“31(3): If the water has been so used for irrigation, the area irrigated shall be measure, and notice shall at once be given on each such occasion to the persons concerned that they will be charged in the demand statement under this rule for the area so watered:”

A look at above provision, shows that notice is required to be given at once to the person concerned to the effect that they will be charged in the demand statement under this rule for the area so watered. A look at Annex.4, shows that while assailing the order Annex.1, no objection in this regard was ever raised before the Superintending Engineer, rather contention raised was, that on account of party

groupism, false case has been prepared against the petitioner. In that view of the matter, this contention does not merit acceptance.

Coming to the second and third contentions together, the Appellate Authority in para no.3 has found, that according to the petitioner, turn of irrigation is with respect to joint Khata, and by stoppage of supply water, whole family would suffer; and on this contention, finding has been given to the effect that since the turn of irrigation is qua the joint Khata, and irrigation facility is being given to the joint Khata, therefore, joint Khata would be responsible for the consequences.

Significantly, it is nowhere the case of the petitioner before the authorities below, as to what was the extent of share of land, which was required to be ordered to be effected by stoppage of water supply, as given in Rule 31(2). Rule 31(2) of the Rules, is reproduced as under:

> "In the case, of a person or persons wilfully cutting the banks or placing bunds in the bed of a canal or damaging outlets or drawing excess supplies by placing siphons on canal, etc., for the purpose of irrigating their fields or otherwise the punitive rate will be in each case, be twenty times, the orginary rate for each separate and distinct occasion on the area which such water is supplied or spreads [and they shall also debarred from canal irrigation for one year]."

A bare reading of this Rule shows that it provides two consequences of illegal extraction of water, whether by cutting the banks or placing bunds in the bed of a canal or damaging outlets or drawing excess supplies by placing siphons on canal, etc., for the purpose of irrigating their fields or otherwise. In that case, punitive rates is prescribed, and with this prescription, it is prescribed that this rate could be charged for each separate and distinct occasion on the area which such water is supplied or spreads. Then additional consequence is provided as "they will be debarred from canal irrigation for one year". This expression relates to the person or persons

illegally extracting water, and is not related to the area of land, to which such water is supplied or is spread. This provision for debarring from canal irrigation is entirely distinct consequence from one provided for, being levy of penalty at 20 times the ordinary rates. One has co-relation with the area of land, over which water is spread or irrigated, while other has not.

In view of above, second and third contentions cannot be accepted.

The writ petition, thus has no force, and is hereby dismissed summarily.

(N P GUPTA),J.

/Srawat/